

APPEAL NO. 032569
FILED NOVEMBER 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 17th or 18th quarters. The claimant appeals the hearing officer's decision. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the 17th and 18th quarters.

It is undisputed that the claimant did not work or look for work during the qualifying period for the 17th quarter. The claimant contended that she had no ability to work during the qualifying period for the 17th quarter. The claimant documented job contacts during the qualifying period for the 18th quarter and contended that she made a good faith job search in that qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(e) lists information to be considered in making the determination on whether the claimant has made a good faith effort to obtain employment.

With regard to the 17th quarter, the hearing officer found that the claimant failed to provide a narrative report which specifically explained how the compensable injury caused a total inability to work during the qualifying period for the 17th quarter and that the evidence was insufficient to satisfy all of the requirements of Rule 130.102(d)(4). Whether the claimant provided a sufficient narrative report was a fact question for the hearing officer to decide from the evidence presented. The hearing officer is the sole

judge of the weight and credibility of the evidence. Section 410.165(a). In light of the hearing officer's finding that the claimant did not provide a sufficient narrative from a doctor which specifically explained how the compensable injury caused a total inability to work, the hearing officer's finding that the claimant had no ability to work during the qualifying period is untenable. See Texas Workers' Compensation Commission Appeal No. 010896, decided June 4, 2001. However, since the hearing officer determined that the claimant did not meet all of the requirements of Rule 130.102(d)(4), her determination that the claimant is not entitled to SIBs for the 17th quarter based on an assertion of no ability to work is correct.

With regard to the 18th quarter, the hearing officer found that the claimant had some ability to work and that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for that quarter. The hearing officer was apparently not persuaded that the claimant was actually attempting to obtain employment when she made her job contacts. As noted, the hearing officer is the judge of the weight and credibility of the evidence.

Although there is conflicting evidence in this case, we conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the 17th and 18th quarters is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986)

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge